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Committee against Torture
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Summary record of the 1225th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 7 May 2014, at 3 p.m.

Chairperson: Mr. Grossman

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The meeting was called to order at 3.10 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Initial report of Guinea (continued) (no symbol, HRI/CORE/1/Add.80/Rev.1)

1. *At the invitation of the Chairperson, the delegation of Guinea took places at the Committee table.*

2. **Mr. Diaby** (Guinea) said that the State party was aware that legal dispositions were in themselves not enough to ensure the protection of human rights. His country had a troubled political history that had undermined the workings of the State, and that fact had to be faced before an environment could be created in which human rights were respected. The gulf that separated legal theory from reality had to be bridged. A commission made up of representatives of the Government, national institutions, civil society, the International Committee of the Red Cross and human rights organizations had been set up to reform the Criminal Code. It was planned to abolish the death penalty and to incorporate into the Code the definition of torture as it appeared in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Torture was already prohibited under the 2010 Constitution, under which it was also established that no one could be obliged to carry out an order that was manifestly illegal, and that following orders could not be considered a mitigating circumstance for committing acts of torture or ill-treatment.

3. By law, a person charged with a crime was presumed innocent until proven guilty and had the right to a fair hearing before a court and to be represented by counsel. Indeed, defence counsel was mandatory where the defendant had an illness that prevented him or her from conducting their own defence. Under article 9 of the Constitution, a person could not be charged for an offence retroactively after it had been criminalized. Under the Code of Criminal Procedure, all forms of communication and other facilities that were compatible with prison security were permitted to detainees in pretrial detention for the purpose of mounting their defence. The letter of the law, however, was often not respected.

4. The State party had ratified the Rome Statute of the International Criminal Court. Under the 2010 Constitution, the roles of the armed forces and security services had been separated. The former were entrusted with the defence of the country's territory, and the latter were responsible for maintaining law and order, civil protection and public security.

5. Currently, justices of the peace were invested with the power to act for the public prosecution service. That system was clearly not in line with international standards and would be reviewed as part of the process of legal reform. The independence of the judiciary was guaranteed by law. Questions concerning the independence of the courts, the appointment of judges and the granting of pardons were dealt with by the Supreme Council of the Judiciary. Although sitting judges and public prosecutors were appointed by the President of Guinea, appointments were only valid once approved by the Council. The fact that the President of the State party headed the Council gave rise to the question of the involvement of the executive branch in the operation of the judiciary. However, the President did not take part in any of the Council's deliberations. The weakness of the State and the effective superiority of other sources of power, such as the armed forces and traditional chiefs, inevitably meant that the independence of the judiciary in Guinea had hitherto been compromised.

6. The Children's Code included a broad range of measures aimed at promoting the development and well-being of children in the State party. Judicial protection for young persons was guaranteed by juvenile courts. Mediation was provided for under the Code in order to obviate the need for criminal proceedings in the case of young offenders where

possible. Prison terms of not more than 3 years could be replaced by community service orders, whereby the minor would be expected to carry out 10 hours of community service a week. The reality, however, was rather different and mediation was rarely attempted. In spite of legal provisions to the contrary, minors aged 13 to 18 years who were held in police custody were generally not separated from adults. The same could be said for other forms of detention. More needed to be done to enforce the separation of detainees by sex and according to their health situation. Although desirable, regulations stating that persons whose prison terms were due to end before they reached the age of 28 should be placed in detention facilities where they could receive schooling or professional training, were not observed.

7. The Constitution guaranteed the right of asylum in Guinea to anyone who was persecuted because of their beliefs, race, ethnic background, intellectual, scientific or cultural activities, or activities in defence of freedom. However, the State party lacked the resources to implement an effective asylum policy. Under the current Code of Criminal Procedure, no one could be extradited unless charged with or convicted of offences that incurred a criminal penalty. Foreign nationals in Guinea's territory could be extradited if they had been prosecuted or convicted in criminal proceedings by the courts in the requesting State, and the minimum possible sentence for the offence was 2 years' imprisonment or, in the case of persons already convicted, a minimum of 2 months' imprisonment.

8. Varying periods of pretrial detention were established under the law according to the seriousness of the alleged offence. In no case could pretrial detention be extended beyond a period of two years. However, the system of pretrial detention had been abused for the previous 30 years. In one case, a person had been held in pretrial detention for 14 years and had never been brought before a judge. In the past, the matter of human rights simply had never arisen in public debate but public indignation at human rights violations was growing.

9. Some progress had been made on court hearings regarding the massacre of 28 September 2009 and one official had been charged with rape. Charges had also been brought against two military officers. No action had been taken in the Zogota and Soronkony cases. In the latter case, however, there had been recent reports that some of the young people involved had been released and had returned to Conakry. Further hopeful signs included the conviction of Momo Bangoura, an officer of the gendarmerie, on charges of torture and murder and his sentencing to 15 years' imprisonment, and the establishment in the State party of an impunity observatory by the Ministry of Human Rights and Public Liberties. The Ministry also planned to invite the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence to Guinea, with a view to assisting the State party to embark on a period of transitional justice.

10. Turning to administrative and policy issues, he said that his Government had undertaken reforms in the security, judicial and finance sectors. Many of the reforms, such as the Status of Military Personnel Act of January 2012 and the Code of Conduct for members of the defence and security forces, responded to the country's need for measures to protect and promote human rights.

11. The judicial system was being reorganized to meet international standards in areas such as the separation of powers and fair trial guarantees. A draft decree increasing the salaries of judicial staff was on the table. If the current system did not function well, it was partly due to the working conditions of judges and the fact that other judicial workers did not enable them to do their work properly. They needed to be more accountable but also better supported.

12. The Government had begun equipping police and gendarmerie officers better so that during demonstrations, for example, they could focus on doing their work rather than on protecting themselves. That in turn would reduce violence during such events. Gendarmerie academies had been renovated and military academies had been provided with human rights training modules. A commission had been set up to introduce human rights education in primary schools. Training for judiciary workers was also being developed.

13. Guinean society suffered from serious structural problems. Harmful practices such as the toleration of impunity had long been accepted and it would take time to change them. He emphasized that, while his Government was determined to improve the human rights situation in Guinea, its partners in that endeavour must recognize the specificities of the country's past and present situation.

14. **The Chairperson**, speaking as Country Rapporteur for Guinea, said that he appreciated Mr. Diaby's frank evaluation of the situation. Welcoming the State party's intention to incorporate a definition of torture into the new Criminal Code, he asked when the Code was likely to be adopted. Had he understood correctly that the State party intended to abolish the death penalty? Would the new Code of Military Justice specify that only members of the military, and not civilians, could be tried by military courts? Such a provision was important for preventing conflicts of interest. He asked why the President officially chaired the Supreme Council of Justice if he did not actually preside over its meetings.

15. Turning to the issue of detention, he asked to what extent children were imprisoned together with adults. Did Guinea have any secret prisons? Had the facility on Kassa Island been officially closed? He added that the State party's laws on preventive detention were not clear enough to prohibit abuses. He requested confirmation that Guinea did not subject anyone to refoulement where that would constitute a violation of article 3 of the Convention.

16. With reference to article 109 of the Constitution, he asked what the "conditions established by law" for guaranteeing the permanency of judicial appointments consisted of, noting that 80 per cent of judges in Guinea held provisional appointments and could be removed at will.

17. **Mr. Gaye** (Country Rapporteur) said that there was always a gap between law and practice. When that gap became very large, urgent measures were needed. In the case of Guinea, there were measures that would cost little and bring great benefits. For example, the armed forces should return to their core role of guarding the country's borders, while the task of maintaining public order should be left to the police and the gendarmerie.

18. The poor conditions prevailing in prisons, for both inmates and staff, were another area requiring immediate attention. Prison workers required training to bring their behaviour up to civil service standards and discourage corruption. A number of measures that would not involve additional costs could be implemented to reduce overcrowding in the prisons, such as introducing alternatives to imprisonment, including community service.

19. He asked to what extent the legal provision allowing persons deprived of liberty immediate access to legal counsel was actually implemented. Such persons required legal assistance both upon being taken into custody and during legal proceedings.

20. Turning to the issue of impunity, he asked whether the public figures incriminated by an international commission of inquiry in connection with the events of 28 September 2009 had been indicted for their role in those events. He stressed that it was unacceptable that two leading figures in an attack on the President's home continued to occupy their posts.

21. He asked for information on any cases brought under the State party's legislation prohibiting female genital mutilation. The State party might wish to consider ratifying the Optional Protocol to the Convention as that would enable it to establish a national preventive mechanism. On the issue of reparations, specifically in relation to the Diaré case, he recalled the civil responsibility of the State in cases where State officials were involved in acts of torture, and requested additional information in that regard.

22. **Mr. Modvig**, welcoming the fact that the Minister for Human Rights personally conducted prison visits, recalled the importance of ensuring that such visits were unannounced so as to ensure that conditions were not staged. Systematic prison monitoring by NGOs should be considered; it would simply require NGOs to be granted full and unlimited access to places of detention. He would be interested to hear the delegation's views in that regard.

23. **Ms. Gaer** asked whether the recommendations of the commission of inquiry into the events of 28 September 2009 were being followed. Noting the extremely serious accusations made in the commission's report, including the allegation that the Guinean authorities had deliberately destroyed the traces of the violations committed with the aim of concealing the facts, she wondered whether anyone had been held responsible or charged and whether there had been any further investigation into the claims of deliberate concealment.

24. **Mr. Zhang** said that, despite the cultural and historical complexity of the situation in Guinea, there could be only one international standard for the protection of human rights, and the principle of *pacta sunt servanda* must apply. He asked the delegation to comment on what the Committee could do to support the implementation of the Convention in Guinea.

25. **Mr. Domah** expressed concern at the State party's attitudes towards the challenges to be overcome, and the fact that shortcomings were being justified on historical grounds. Many of the legislative, administrative and judicial measures required to comply with the obligations under the Convention did not require significant resources.

26. **The Chairperson** asked the delegation to comment on progress being made in respect of the inquiry into the events of 28 September 2009. He stressed the importance of not allowing the cover-up to be swept under the carpet. He would be interested to hear more about what was being done in the area of trafficking in persons. Noting the extremely high rate of female genital mutilation, he asked whether there had been any convictions in that regard, what budget had been allocated to addressing the problem and what institutions were involved.

27. **Mr. Diaby** (Guinea) said that the State party's acceptance of the relevance and legitimacy of the Convention and the Committee's work was not in doubt. The delegation had simply sought to explain the complex context in which the Convention was being implemented in Guinea, not to make excuses or appeal for special treatment. The Government was aware of the shortcomings and the social, political and even moral challenges the country faced.

28. A variety of stakeholders, including human rights organizations, were involved in the current review of the Code of Criminal Procedure. It had originally been hoped that the new draft would be ready for consideration in the current legislative session, but it had been decided to submit it for the next session in April 2015 so as to allow enough time to bring the Code fully in line with the Constitution and international obligations. There was no reason to believe that the draft would not be adopted at that time. With regard to the death penalty, the Government was currently working with the European Union to prepare Guinean society for abolition. That the death penalty would eventually be abolished was not in doubt, but efforts were being made to ensure that the process was peaceful.

29. With regard to the concerns in relation to the military courts, the problem had been resolved following a visit by a European Union delegation. All crimes other than military acts currently came under the jurisdiction of the ordinary courts.

30. Guinea drew on the experiences of other countries in a number of areas, and had also done so in the past. However, there was always the risk that in so doing it might also adopt flawed practices or legal provisions. For example, the problems in relation to the independence of the judiciary had actually been carried over from the 1958 Constitution of France, which had served as a model for many francophone West African countries. There had been no cases of refoulement to a country where an individual was at risk of torture. In fact, Guinea had recently taken in a Chadian journalist who was at risk in his home country and had been expelled from another country in the region.

31. On the issue of pretrial detention, he acknowledged that the situation in Guinea was not in line with the Convention. In partnership with civil society, a structure would be set up to monitor pretrial detention. Teams were currently working throughout the country to identify persons whose detention had exceeded the legal limits or who had been detained arbitrarily. The State would spare no effort in addressing the situation. All necessary measures were being taken also to tackle impunity, as it was clear that the situation needed to change. Officially, the last secret prison had been closed in 2010. He invited the NGO representatives who had alleged that such prisons continued to exist to provide a list with exact details. All such substantiated claims would be investigated by the Ministry of Human Rights.

32. With regard to the discrepancy between the State's laws and actual practice, Guinea was aware of the urgent need to address that problem. The State party would welcome the Committee's support in that regard. A comprehensive approach was required to deal with the many challenges appropriately.

33. The armed forces were no longer involved in law enforcement, for example during mass demonstrations. By law, only the police and the gendarmerie were responsible in that area. On the issue of access to legal counsel, he stressed that there was a dire shortage of lawyers in the country — there were only 225 lawyers for a population of 11 million — and there were virtually none outside the capital. Efforts were being made to ease the situation. For example, with funding from an American NGO, a system of paralegals was being set up to cover areas outside Conakry, and a number of associations were working to provide assistance to children in conflict with the law.

34. There had been no convictions for female genital mutilation. In fact, the United Nations Children's Fund (UNICEF) had recently prepared a report aiming to identify the reasons for the lack of progress with its programme to eradicate the practice. A television campaign had recently been launched on the subject. The fact that the cost for female genital mutilation had increased because the practice was being carried out clandestinely and it was difficult to find practitioners showed that the situation was changing. Efforts were being made to retrain the practitioners of female genital mutilation so that they could replace their source of income.

35. The State party planned to ratify the Optional Protocol to the Convention during the next legislative session. There was no system of reparations in the country, and none had been made in the Diaré case. With regard to prison monitoring, efforts had been made in the past to make unannounced visits, but the prison authorities had tended to warn those in other prefectures that visits were under way. With regard to the events of 28 September 2009, many steps had been taken but it was acknowledged that much remained to be done and that the process needed to be accelerated. The State was committed to ensuring that real justice was done.

36. **The Chairperson** thanked the delegation for its candour and the constructive exchange of views.

37. **Mr. Diaby** (Guinea) said that his country was fully committed to cooperating with all of the United Nations treaty bodies and other international human rights mechanisms.

The meeting rose at 6 p.m.